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9 BISCOTTI, INC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BISCOTTI, INC.,

Plaintiff,

v.

KANDY KISS OF CALIFORNIA, INC.
d/b/a Zoey, and DOES 1-10, inclusive,

Defendants.

Case No. 3:07-cv-3681 BZ

**STIPULATION AND PROPOSED ORDER RE
PRIVATE MEDIATION IN LIEU OF COURT-
CONNECTED MEDIATION**

Complaint Filed: July 17, 2007

IT IS HEREBY STIPULATED, between plaintiff, BISCOTTI, INC., ("Plaintiff") and defendant KANDY KISS OF CALIFORNIA, INC. d/b/a Zoey ("Defendant") by and through their respective attorneys of record herein, that:

1. WHEREAS, on July 17, 2007, Plaintiff filed this civil action for copyright infringement and related claims, and
2. WHEREAS on September 24, 2007, Defendant filed its Answer to Complaint.
3. WHEREAS on July 17, 2007, the Court referred this matter to the court-connected mediation program pursuant to (ADR L.R. 6), and
4. WHEREAS the parties have agreed to attend private mediation in lieu of court-connected mediation. The parties are in the process of coordinating a date with a private mediator.

1 Both parties believe private mediation will be more conducive to resolution of the case.

2 NOW, THEREFORE, THE PARTIES HEREBY STIPULATE, as follows:

3 1. The parties agree to attend private mediation in lieu of court-ordered arbitration as
4 regards this matter, and

5 2. The parties will confer and endeavor to agree upon a mutually acceptable mediator
6 and will promptly notify the court of their selection once a date has been confirmed.

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9 Dated: November 27, 2007

NIXON PEABODY LLP

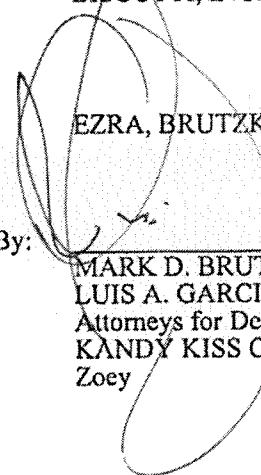
10 By: 

11 GLENN E. WESTREICH
12 ROSALYN P. MITCHELL
13 Attorneys for Plaintiff
BISCOTTI, INC.

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15 Dated: November 16, 2007

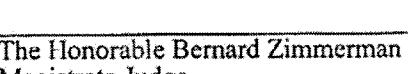
EZRA, BRUTZKUS, GUBNER LLP

16 By: 

17 MARK D. BRUTZKUS
18 LUIS A. GARCIA
19 Attorneys for Defendant
20 KANDY KISS OF CALIFORNIA, INC. d/b/a
21 Zoey

22 It is so ordered.

23 Dated: _____

24 By: 

25 The Honorable Bernard Zimmerman
26 Magistrate Judge

PROOF OF SERVICE

1 *Biscotti, Inc. v. Kandy Kiss of California, Inc., et al.*
 2 United States District Court, Northern District
 2 Case No. 3:07-cv-3681 BZ

3 I, the undersigned, certify that I am employed in the City and County of San Francisco,
 4 California; that I am over the age of eighteen years and not a party to the within action; and that my
 4 business address is Nixon Peabody LLP, One Embarcadero Center, 18th Floor, San Francisco, CA
 94111-3600.

5 On November 27, 2007, I served the following document(s):

6 **STIPULATION AND PROPOSED ORDER RE PRIVATE MEDIATION IN**
 7 **LIEU OF COURT-CONNECTED MEDIATION**

8 on the parties stated below, through their attorneys of record, by placing true copies thereof in sealed
 9 envelopes addressed as shown below by the following means of service:

10 By First-Class Mail — I am readily familiar with the firm's practice for collection and
 11 processing of correspondence for mailing. Under that practice, the correspondence is
 11 deposited with the U.S. Postal Service on the same day as collected, with first-class postage
 12 thereon fully prepaid, in San Francisco, CA, for mailing to the office of the addressee
 12 following ordinary business practices.

13 By Personal Service — I caused each such envelope to be given to a courier messenger to
 13 personally deliver to the office of the addressee.

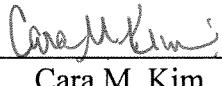
14 By Overnight Courier — I caused each such envelope to be given to an overnight mail service
 15 at San Francisco, CA, to be hand delivered to the office of the addressee on the next business
 15 day.

16 By Facsimile — From facsimile number 415-984-8300, I caused each such document to be
 17 transmitted by facsimile machine, to the parties and numbers listed below, pursuant to
 17 Rule 2008. The facsimile machine I used complied with Rule 2003(3) and no error was
 18 reported by the machine. Pursuant to Rule 2008(e)(4), I caused the machine to print a
 18 transmission record of the transmission, a copy of which is attached to the original of this
 19 declaration.

20 **Addressee(s)**

21 Mark D. Brutzkus, Esq. 21 Luis A. Garcia, Esq. 22 EZRA, BRUTZKUS, GUBNER LLP 22 21650 Oxnard Street, Suite 500 23 Woodland Hills, CA 91367	24 Attorneys for Defendant Kandy Kiss of California, dba Zoey Telephone: (818) 827-9000 Facsimile: (818) 827-9099 mbrutzkus@ebg-law.com lgarcia@ebg-law.com
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25 I declare under penalty of perjury that the foregoing is true and correct. Executed on
 26 November 27, 2007, at San Francisco, California.

27 
 28 Cara M. Kim